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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554
FCC 93-77

In the Matter of)
Implementation of Section 26)
of the Cable Television Consumer)
Protection and Competition Act)
of 1992)
Inquiry Into Sports Programming)
Migration)

PP Docket No. 93-21

FURTHER COMMENTS OF THE NATIONAL FOOTBALL LEAGUE

The National Football League ("NFL" or "League") submits these comments in response to the Further Notice of Inquiry, FCC 94-65 (adopted March 10, 1994; released March 11, 1994), requesting additional information concerning the carriage of sports programming by television broadcast stations and subscription media.

The Further Notice seeks generally to update the record compiled in this proceeding last year and reflected in the Interim Report, 8 FCC Rcd 4875, issued to Congress on July 1, 1993. With respect to professional football, the Further Notice observes that subsequent to the Interim Report the NFL has entered into several new broadcast and cable exhibition agreements for regular and post-season games and requests information concerning those agreements. In particular, the Further Notice asks "whether the movement of National Football Conference games from CBS to Fox will affect the availability of games via broadcast television." Interim Report at ¶ 19.

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Also subsequent to the Interim Report, the NFL announced plans to scramble its existing satellite feeds and to sell packages of games to both home dish owners and commercial establishments such as sports bars. The Further Notice seeks information as to "the schedule for scrambling and the terms (including cost) under which games will be made available to sports bars and dish owners" and "whether this development has any implications for future offering of NFL games to other audiences on a subscription basis." Id.^{1/}

Before addressing these specific questions, the NFL wishes to emphasize that its new distribution agreements and plans are entirely consistent with the finding in the Interim Report "that professional football has experienced no migration" from "free" to "subscription" television. Under the new agreements, as under the old, "all regular season and post-season games [will be] shown on broadcast television." And under the new agreements, as under the old, arrangements with alternative media serve only "to make games available nationwide that would otherwise have only been available on a regional basis." Interim Report at ¶ 27.

^{1/} The Further Notice also seeks comment on a number of other topics, including, e.g., intermodal disparities in the growth of sports programming and the effect of sports antitrust exemptions. Further Notice at ¶¶ 11-17. To the extent that the League has views on these subjects, they were addressed in the comments and reply comments filed in response to the Commission's original Notice of Inquiry in this docket, 8 FCC Rcd 1492 (1993), are incorporated herein by reference.

Indeed, the League's broadcast plan is essentially the same as it was under the prior contracts -- all regular and post-season games will continue to be broadcast, and the number of games broadcast each week in a given market will be unchanged (as will be the number of games shown nationally on cable). The only differences are the substitution of Fox for CBS and providing satellite dish owners with legitimate access on a season subscription basis to regional telecasts that would not otherwise be available on either broadcast or cable in their areas. While there is every reason to think that both of these changes will enhance competition in the home video market, neither portend any migration of professional football from broadcast television.

I. The New Broadcast and Cable Network Agreements

The relevant provisions of the prior broadcast contracts were described in the Interim Report. at ¶¶ 21-25. Under those contracts, which expired with the end of the 1993 season, CBS, NBC, and ABC had the rights to broadcast certain packages of games during the pre-season and regular season -- CBS primarily broadcast the National Football Conference ("NFC") "package" of regional games on Sunday afternoons; NBC primarily regional broadcast the American Football Conference ("AFC") "package" of games on Sunday afternoons; and ABC one

national primetime game each week, usually on Monday nights.^{2/} The NFC and AFC packages were "non-exclusive", i.e., competing games could be shown at the same time, while the ABC games were exclusive. All post-season championship games, through the Super Bowl, were televised nationally by the three networks.

To the home-viewer, this arrangement typically provided access to two or three game broadcasts each Sunday (depending on whether the viewer's local team was playing at home on Sunday afternoon)^{3/}, as well as one game every Monday night. In addition, CBS and NBC each broadcast on a national basis one game on Thanksgiving Day and one game on the last two or three Saturdays of the season.

Under the prior cable network contracts, TNT and ESPN between them had exclusive rights to telecast one national primetime game each week. These games were typically played on Sunday nights, with TNT telecasting games in the first half of the season and ESPN telecasting games in the second half. Both cable networks were required by contract to make these games available for over-the-air broadcast in the home area of the visiting club and, if the game was sold out 72 hours in advance, in the home area of the home club.

^{2/} For interconference games on Sunday afternoons, network broadcast rights follow the visiting team.

^{3/} These games included all the home club's away games and all its home games sold out 72 hours in advance.

Finally, ESPN each year telecast the Pro Bowl, held the week following the Super Bowl.

Under the new broadcast and cable agreements, which extend through the end of the 1997 season, viewers will have access to the same number of pre-season and regular season games at the same times and subject to the same guidelines.^{4/} There will still be two or three Sunday afternoon broadcasts and one Monday night broadcast each week, as well as the Thanksgiving Day and late season Saturday broadcasts, and the same factors will be applied in determining which games will be shown. TNT and ESPN will continue to share one national cable game, usually on Sunday night. All post-season games, including the Pro Bowl, which will move from ESPN to ABC, will be carried on one of the three networks broadcasting regular season games.

Viewers will, of course, be watching NFC package games on Fox affiliates or Fox designees instead of CBS affiliates. Obviously, it was with great reluctance that the League parted company with CBS with whom it has enjoyed a long and mutually beneficial relationship. CBS first began broadcasting NFL games on a League-wide basis in 1962, and the quality of its broadcasts was, like the organization that produced them, consistently outstanding.

^{4/} While the number of games played will remain unchanged, the League has reduced the length of the season from 18 to 17 weeks.

The League has no doubt that Fox, too, can and will produce a high quality product. Nor should there be any concern as to Fox's ability to provide coverage comparable to that of CBS. It is the League's understanding that, at the time the Fox contract was entered into, Fox either owned or had primary affiliations with stations covering approximately 92 percent of the nation's households. While this coverage is somewhat smaller than the reach of CBS's owned stations and primary affiliates, Fox has assured the League that it will endeavor, through new primary or secondary affiliation or NFL-only programming agreements, to extend household coverage for the NFC package to any and all markets without Fox affiliates.^{5/}

Nor can there be any doubt that by contracting with Fox, the NFL has enhanced the competitiveness of the broadcast marketplace. Whether Fox expands its reach through additional or more powerful affiliates or through ad hoc arrangements with stations affiliated with the other three networks or through additional cable carriage, it seems apparent that carriage of the NFC will assist Fox in achieving coverage more nearly comparable to that of the other networks. By increasing the number of fully competitive broadcast outlets,

^{5/} Fox has also embarked on a program to improve its coverage by upgrading the transmission facilities of its affiliates. NFL programming should assist Fox stations and affiliates in obtaining cable carriage comparable to those of the other networks.

the Fox transaction should also improve the competitive posture of broadcast television networks as a group vis-a-vis subscription media for sports programming. The result surely will be less migratory pressure on professional football or other sports programming for the foreseeable future.

II. The New Satellite Agreements

In addition to reaffirming its commitment to broadcast television, the League intends to initiate distribution of NFL games to satellite dish owners. Starting with the 1994 season, the League will make available to C-band satellite dish owners a "season ticket" package of out-of-market regional game telecasts. The package will include all Sunday afternoon regional telecasts other than games that are blacked-out in the area in accordance with the League's blackout policy. It will be available to both private households and commercial establishments, such as sports bars.

This arrangement has been driven in the first instance by the League's need to secure its broadcast distribution system. For a variety of reasons, the network "backhaul" and "fronthaul" (or "affiliate") satellite feeds of NFL Sunday games, i.e., the feeds from the game site to the network studios in New York and the feeds from New York to the affiliated stations, have remained unencrypted despite the fact that every other satellite-delivered broadcast and cable sports service (and nearly every programming service) is now

securely scrambled. While it is illegal to intercept even unscrambled backhaul and affiliate feeds, piracy by individual homes, sports bars and other commercial establishments has been rampant.^{5/}

The NFL is committed to securing the integrity of its distribution system and its rights to its product. Prior efforts to encrypt these signals have met with substantial resistance from both home dish owners and sports bar owners, in large part because of the lack of any legitimate alternative means by which these long-established recipients could continue to get service. Accordingly, all of the League's new broadcast agreements require network encryption of the satellite feeds of NFL games starting with the 1994 season. At the same time, the League has established a distribution system which assures that the existing package of games remains available to the satellite dish market at a reasonable cost.

The service will be transmitted initially through transponders leased on Telstar 303 and marketed by multiple,

^{5/} Such unauthorized interception is plainly unlawful under the Copyright Act, 17 U.S.C. §§ 101 et seq. The League has brought more than a dozen infringement suits in federal courts across the country to block commercial establishments from using satellite dishes or other antennae to intercept regional telecasts that would not otherwise be available in that area. While every court to consider the question has upheld the League's position, see, e.g., National Football League v. McBee & Bruno's, Inc., 792 F.2d 726 (8th Cir. 1986), the expense and adverse public relations impact of such suits makes them highly undesirable.

non-exclusive distributors, including Showtime, Netlink, Superstar Satellite Entertainment, Programmers Clearing House, National Programming Service and others. While specific pricing policies are still being finalized, it is the League's intent to price the service at a level which will assure that both individual home owners and commercial establishments of all sizes will continue to have meaningful access to these games.^{2/} The League also expects that it will make this same package available on comparable terms for distribution on the new Hughes Ku-band direct broadcast satellite, though not until the 1995 season.

As with its cable distribution arrangements, the League's home satellite marketing plan assures that there will be no reduction in the number of games that are being broadcast. It simply extends a number of previously regional telecasts to a national audience. Moreover, by marketing these games solely through a "season ticket" package and not on a per-game basis, the League inhibits the fragmentation of its market. The plan is consistent with the League's basic

^{2/} For the initial season, the League anticipates that the season ticket package will be between \$100 and \$140 for individual homes (or approximately \$6-8 per week) and will range from approximately \$700 for the smallest sports bars to approximately \$2,500 for the largest. In at least one sense, the programming service will be improved even for those who have been unlawfully intercepting the signals: placing all of the games on a single satellite will eliminate the delay caused by switching from one satellite to another to see games being shown on different networks (and should also reduce the number of dishes required by commercial establishments).

regionalized marketing strategy aimed at fostering strong local loyalties while still providing home-team access for the transient fan and a continued business opportunity for commercial establishments.

The League has no present plans to expand distribution of these season ticket packages to other media such as cable. Because of the current channel capacity constraints, cable systems at this time simply do not have the capacity to accommodate season ticket distribution. While anticipated upgrades and signal compression technologies could well dramatically increase capacity, it appears unlikely that a substantial number of cable systems will have the necessary capacity within the next several years. If and when they do, the League will have to evaluate its cable distribution strategy in light of its experience with the satellite dish market.

III. CONCLUSION

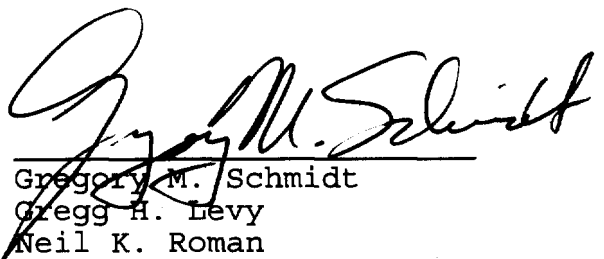
The League's new television plans anticipate that all regular and post-season games will continue to be broadcast for the next four seasons just as they have for the last four years. While there has been a change in its broadcast network lineup and the League will legitimate satellite distribution of its programming, the League anticipates that neither of these developments will have a material impact on the broadcast market. The NFL therefore respectfully submits that the Commission should affirm the

finding in its Interim Report that "professional football has experienced no migration" from free television and should conclude that no regulatory or legislative activity is necessary or appropriate at this time.

Respectfully submitted,

THE NATIONAL FOOTBALL LEAGUE

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